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McKinley's Policy

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AN ARRAIGNMENT

OF

PRESIDENT MCKINLEY'S POLICY

OF

EXTENDING BY FORCE THE SOVEREIGNTY OF THE UNITED
STATES OVER THE PHILIPPINE ISLANDS.

BY

FRANCIS A. BROOKS.

BOSTON,

NOVEMBER, 1899.

ALFRED MUDGE & SON, PRINTERS, 24 FRANKLIN ST.

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Arraignment of President McKinley's Policy of Extending by Force the Sovereignty of the United States over the Filipinos.

I.

On the 24th day of April, 1898, Secretary Long of the Navy Department telegraphed to Dewey as follows : —

“DEWEY, Hong Kong, China :

“War has commenced between the United States and Spain. Proceed at once to the Philippine Islands. Commence operations at once, particularly against the Spanish fleet. You must capture vessels or destroy them. Use utmost endeavors.”

That despatch was sent to Dewey before any declaration of war was made by Congress.

On that same 24th day of April an interview was had at Singapore between United States Consul General Pratt and Aguinaldo. Aguinaldo at that time offered to begin a new insurrection in the Philippine Islands and to operate there in conjunction with the United States Navy. Consul General Pratt thereupon telegraphed to Dewey at Hong Kong as follows : —

“Aguinaldo, insurgent leader here, will come Hong Kong arrange with Commodore for general co-operation insurgents Manila if desired. Telegraph.”

Dewey replied, “Tell Aguinaldo come soon as possible.”

In pursuance of this arrangement Aguinaldo left Singapore for Hong Kong April 26th, and was taken with seventeen other revolutionary Filipino chiefs to Manila on the United States naval vessel “McCulloch.”

They were landed at Cavite, and were furnished by Dewey with guns, ammunition and stores to be used by Aguinaldo against the Spanish forces.

On the 8th of June, 1898, Consul General Pratt in a speech at Singapore said : —

“I am thankful to have been the means of bringing about the arrangement between General Aguinaldo and Admiral Dewey which has resulted so happily.”

On July 4th, 1898, General Anderson, then in command of American troops at Manila, addressed a letter to Aguinaldo as commanding the Philippine forces in which he said, among other things, —

“For these reasons, I desire to have the most amicable relations with you, and to have you and your people co-operate with us in military operations against the Spanish forces.

“General Anderson wishes you to inform your people that we are here for their good, and that they must supply us with labor and material at the current market prices.”

On July 6th, General Anderson in a letter to Aguinaldo, said : —

“It must be apparent to you that we do not intend to remain here inactive, but to move promptly against our common enemy. . . . I am solicitous to avoid any conflict of authority which may result from having two sets of military officers exercising command in the same place.”

On July 17th, General Anderson in a letter to Aguinaldo, asking assistance of the Filipinos in obtaining supplies for United States troops recently arrived at Manila, said : —

“We find so far that the native population are not willing to give us this assistance as promptly as required. But we must have, and if necessary we will be compelled to . . . seize what we may need. We would regret very much to do this, as we are here to befriend the Filipinos. Our nation has spent millions of money to send forces here to expel the Spaniards and to give a good government to the whole people, and the return we are asking is comparatively slight.”

In a letter written by General Anderson to Aguinaldo, under date of July 22d, he closes with these words : —

“Your fine intellect must perceive that, happy as I am to see you fighting so bravely and successfully against a common enemy, I cannot without orders recognize your civil authority.”

General Merritt in his official report says : —

“Shortly after the naval battle of Manila Bay, the principal leader of the insurgents, Gen. Emilio Aguinaldo, came to Cavite from Hong Kong, and with the consent of our naval authorities began active work in raising troops and pushing the Spaniards in the direction of the city of Manila. Having met with some success and the natives flocking to his assistance he proclaimed an independent government of republican form, with himself as president, and at the time of my arrival in the islands, the entire edifice of executive and legislative departments and subdivision of territory for administrative purposes had been accomplished, at least on paper, and the Filipinos held military possession of many points in the islands other than those in the city of Manila.”

General Whittier, in giving testimony before the Peace Commissioners, in answers to questions as to the number of insurgents got together by Aguinaldo, at Manila, before the surrender, said : “His forces went around the city, taking the water works and the north part of the city, and running up the railroad.” I asked that question of several, and the opinions differed widely — all the way from 8000 to 30,000 or 40,000 men.

To the question, “Do you think he had as many as 8000 men before the surrender?” He answered, “Yes, sir; the environment of the city took a great many men.” He said, “Aguinaldo’s headquarters are at Malolos, twenty-three miles up the railroad. His troops control all the settled parts of the island (Luzon) except Masulo, as well as much of the southern country.” He said he meant by the “southern country,” those islands below (*i. e.*, below Luzon).

On and before the 12th day of August, 1898, the city of Manila was in the possession and control of Spain, but it

was invested by the United States forces under the command of General Merritt on the water side of the town, and on the land side by the insurgent forces under General Aguinaldo, who had set up and claimed to have established in the island of Luzon a revolutionary and *de facto* government by proclamation issued on the 23d day of June of that same year.

II.

Such was the situation when the so-called peace protocol was signed at Washington, on Aug. 12th, 1898.

This protocol provided that hostilities between the United States and Spain be suspended, and that "notice to that effect be given as soon as possible, by each government, to the commanders of its military and naval forces."

The third article of this protocol was in these words:—

"The United States will (*i. e.*, may or shall) occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines."

This third article, before being assented to by Spain, had been carefully considered and discussed between the President and the French minister, Cambon, who represented the interests of Spain. As first submitted to Ambassador Cambon it contained the word "possession" where the word "disposition" now occurs. This substitution of "disposition" for "possession" was made upon Cambon's suggestion to the President, the reason, as stated by him, being that if the term "possession" were used, it might carry with it an inference that Spain was willing by treaty to surrender her sovereignty over the Philippine Islands, and that such an idea not only could not be entertained by the Spanish ministry, but, if entertained and assented to by them, would probably operate to prevent a ratification of the treaty in which it was embodied.

The President thereupon assented to the substitution of

the word "disposition," as proposed by M. Cambon, and remarked that the "care and consideration of the Philippine question was left by him to future negotiations," meaning, as we infer, to the joint commission to be appointed under Article 5 of the protocol, to consider and arrange such matters of detail as had not been fully provided for in the peace protocol.

The legal effect and operation of that protocol was to put an end, temporarily and until the meeting of the Peace Commissioners, of hostile operations on either side, and to prevent either party from deriving any advantage therefrom if undertaken.

The United States therefore acquired, by the capture and surrender of Manila, on the 14th day of August, 1898, no greater rights or power over that city or its inhabitants than it had on the 12th day of August, under and by virtue of the protocol.

The possession of Manila which General Merritt, in ignorance of the peace protocol, had gained by war, was by that protocol converted into the possession or right of occupation as set forth in the protocol itself, and General Merritt should have taken that view of the situation and acted accordingly. Instead of doing so, he, on the 17th day of August; issued his proclamation for establishing there a government "of military occupation," as if hostilities had continued there, the protocol to the contrary notwithstanding.

III.

When the Peace Commissioners of the two countries came together in Paris, Oct. 1st, 1898, to put the terms of the protocol into the form of a treaty for ratification, it turned out that they were at variance as to the construction of the third article of the protocol.

It was contended on the part of Spain, that while under and by virtue of the third article of protocol the United States was to have possession of the city, bay and harbor of

Manila until the treaty of peace should be concluded or put in form for ratification, it was still left to the joint commissioners, and them alone, to determine as to the future permanent control and government of the Philippine Islands, and, consequently, that the Spanish Commissioners were entitled to have an equal voice in that determination with the American Commissioners; and when the American Commissioners came to demand, as they did, the cession of all those islands to the United States, the Spanish Commissioners demurred, and insisted that no such cession was contemplated by Spain as embraced within the terms of the protocol, and for that reason they refused to yield to the demand, and proposed that arbitration be resorted to as a means of determining the correct construction of the protocol in that regard.

The American Commissioners said in reply, that their view was plainly correct, and that of Spain clearly wrong, so that they would not consent to submit the question to third parties, and they called upon the Spanish Commissioners to yield their opinion in order that "a peaceful solution may [might] be reached," meaning thereby, as understood by the Spanish Commissioners, that unless they did yield to the demand of a cession of the Philippines, the United States would resume hostilities, and obtain by conquest what they had failed to obtain by diplomacy. The American Commissioners however added, that while unwilling to modify their demand for a cession of the entire Philippine Archipelago, they had been "authorized to offer to Spain, in case the cession should be agreed to, the sum of \$20,000,000, to be paid in accordance with the terms to be fixed in the treaty of peace." In answer to this proposition, the Spaniards said: —

"The Spanish Commissioners are now asked to accept the American proposition in its entirety and without further discussion, or to reject it; in which latter case, as the American Commissioners understand, the peace negotiations will end, and the protocol of Washington will consequently be broken."

"The government of her Majesty, moved by reasons of

patriotism and humanity, will not assume the responsibility of again bringing upon Spain all the horrors of war. In order to avoid them it resigns itself to the painful strait of submitting to the law of the victor, however harsh it may be, . . . and she accepts the only terms the United States offers her for the concluding of the treaty of peace."

It was under this pressure that the Spanish Commissioners finally yielded to the demand of President McKinley for the cession by Spain of the Philippine Islands, protesting at the time that they did so to avert the horrors of warfare with which Spain was threatened if she refused to comply, in disregard or violation, as they believed, of the spirit and meaning, if not of the words, of the protocol.

IV.

Hostilities with Spain were temporarily suspended by the protocol of Aug. 12th, and brought to a final end by the treaty of Dec. 10th, 1898, and yet after the expiration of nearly a year we find that President McKinley is now making war against the inhabitants of the island of Luzon for the professed purpose of subjecting them to his rule or that of his military governor, General Otis. The President is waging this war upon his own responsibility and without any authority from Congress. From President McKinley's order to General Otis of Dec. 21st, 1898, it would seem that he then supposed himself to be enforcing certain rights gained by the United States in its war with Spain or under and by virtue of the treaty of peace. In that order the President uses language as follows: —

"The destruction of the Spanish fleet in the harbor of Manila by the United States naval squadron . . . followed by the reduction of the city and the surrender of the Spanish forces practically effected the conquest of the Philippine Islands and the suspension of Spanish sovereignty therein."

"With the signature of the treaty of peace between the United States and Spain . . . on the 14th instant, and as the result of the victories of American arms the future control, disposition and government of the Philippine Islands are ceded to the United States.

"In fulfilment of the rights of sovereignty thus acquired . . . the actual occupation and administration of the entire group of the Philippine Islands became immediately necessary, and the military government heretofore maintained by the United States in the city, harbor and bay of Manila is to be extended with all possible despatch to the whole of the ceded territory."

In his message to Congress of Dec. 5th, 1898, the President said : —

"The last scene of the war was enacted at Manila, its starting place. On Aug. 13th, after a brief assault upon the works by the land forces . . . the capital surrendered unconditionally. . . .

"By this, the conquest of the Philippine Islands, virtually accomplished when the Spanish capacity for resistance was destroyed by Admiral Dewey's victory of the first of May, was formally sealed. . . .

"I do not discuss at this time the government or the future of the new possessions which will come to us as the result of the war with Spain."

In a speech at Savannah, Dec. 17th, 1898, the President said : —

"If, following the clear precepts of duty, *territory falls to us*, and the welfare of an alien people requires our guidance and protection, *who will shrink* from the responsibility, grave though it be? . . .

"It is not a question of keeping the islands of the East but of leaving them.

"Dewey and Merritt took them and the country instantly and universally applauded."

When the President said this, he well knew that at the date of this protocol no territory in the Philippine Islands had fallen to or been acquired by us from Spain, and that by the protocol we had no right to hold permanently the city, bay and harbor of Manila, and that the only right given us by the third article of the protocol was the right of occupying those places temporarily or until the treaty of peace should be put in form by the joint commission and signed.

The President, therefore, was wrong, either knowingly or

unknowingly, in making the statements above quoted, to the effect that the United States had acquired the Philippine Islands by conquest in the war with Spain. We are supported in this respect by Judge Day, the chairman of the American Peace Commission, who, in a letter recently published, referring to the doings of the Peace Commission at Paris, said : —

“It was not claimed that the United States had a right to the Philippine Islands as a matter of conquest. . . . The capture, after the signing of the protocol, by General Merritt and his forces, whatever its legal effect may have been, included no more territory than we were entitled to hold under the protocol.”

In his more recent utterances, the President has put his claim to the Philippines also upon the ground of cession. In a speech, made by him, in September last, at Pittsburg, he said : —

“Peace brought us the Philippines by treaty cession from Spain.”

In addressing the Home Market Club at Boston, the President said : —

“The Philippines, like Cuba and Porto Rico, were intrusted to our hands by the providence of God.”

He had probably forgotten his instructions to the Peace Commissioners on their leaving Washington for Paris, to “take Luzon,” as we are told by Senator and Commissioner Frye that he did.

V.

Let us now inquire whether or not the President is correct in stating that the United States has come into the possession and legislative control of the Philippine Islands, either by the hand of God, by treaty, or in any other way. This treaty of cession could carry with it and give to the United States only such property, land or territorial rights

in the Philippines as belonged at the time to Spain. It did not include any lands or property then belonging to the inhabitants in their individual capacity, or to corporate bodies or institutions, ecclesiastical or lay. The treaty itself does not purport to have any such operation, and could not so operate even if it did so purport, and it does not appear that Spain then owned or possessed public lands of any considerable value or extent.

Coming then to the question whether the treaty with Spain has operated to convey to the United States the right to regulate the political rights of the inhabitants of the Philippine Islands, it is provided by the ninth article of the treaty, that —

“the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress.”

For the purposes of this discussion, we will limit our inquiry to the effect of this treaty upon the political and civil rights and condition of the inhabitants of the island of Luzon alone, not including the city of Manila and vicinity or the occupants of lands now in the possession or control of General Otis as military governor. The question really is, whether or not, by this treaty, the native inhabitants of this island of Luzon have at the present time been subjected in any way to the legislative powers of the Congress of the United States. This rule is styled sovereignty in monarchical countries. This term does not seem appropriate in the United States, where the people themselves are the sovereigns and law makers, and where it is not now possible for the federal government to hold or govern colonies, no such possessions being contemplated or provided for by the framers of the Constitution of the United States.

VI.

After this so-called rebellion shall have been suppressed by him without putting to death the entire population, how does the President propose to govern the island of Luzon or its surviving inhabitants?

If the ninth article of the treaty did not place them in the power or government of the United States Congress as claimed by President McKinley, then he is guilty not only of "criminal aggression," but of wholesale slaughter also, in ordering General Otis to enforce that order by force of arms.

If the Filipinos were not by the treaty with Spain subjected to the dominion and control of the United States, we do not see how they can be held or ruled over as colonists of the United States.

It is quite true that they had been colonists of Spain, and that Spain's right over them as colonists was recognized by William McKinley and bid for and purchased by him from Spain. But even if they had been a marketable commodity at any time, they had ceased to be so after the power of Spain over them had been successfully resisted and overcome before the treaty of peace was made.

Chancellor Kent in his *Commentaries*, Vol. I., page 178, referring to territories added or acquired, said: —

"Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence. . . .

"This general law of property applies to the right of territory, no less than to other rights. The practice of nations has been conformable to this principle, and the conventional law of nations is full of instances of this kind."

In a treatise on *International Law*, by Sir Shurston Baker, just published at Boston, by Little, Brown & Co., at page 61, that author says: —

"In modern times sales and transfers of national territory to another power can only be made by treaty or some solemn act of the sovereign authority of the State. And such transfers of territory do not include the allegiance of its inhabitants without their consent, express or implied."

At page 355, the same author says : —

"The rule of public law with respect to the allegiance of the inhabitants of a conquered territory is, therefore, no longer to be interpreted as meaning that it is absolutely and unconditionally acquired by conquest, or transferred and handed over by treaty as a thing assignable by contract and without the assent of the subject."

"On the contrary, the express or implied assent of the subject is now regarded as essential to a complete new allegiance."

VII.

Let us now see what was the situation in the island of Luzon, which had previously been the seat of the war between the United States and Spain, on the 10th day of December, 1898, when the treaty was signed. The Spanish army consisting of twelve thousand men, before then besieged in the city of Manila by the American forces on the water side, and the insurgent Filipinos on the land side, had surrendered to General Merritt on the 14th day of August, 1898, and possession was then taken of the captured city and its suburbs by General Merritt.

The insurgent forces had assisted in that siege and capture and expected and claimed the privilege of entering the captured city with the American troops, but were denied that privilege, so that the city and its suburbs were placed by the Spanish surrender in possession of the United States troops, and continued to be held by them at the time of the treaty of peace, and is still so held.

The country outside of Manila and its suburbs remained as before in the possession and military control of the native inhabitants, organized as a revolutionary government in opposition to Spanish rule under the lead of Aguinaldo as head of the army and president.

This government was established and existed *de facto* in the island of Luzon for some time previously to the conclusion of the treaty of peace.

Such was the exact state of things in the island of Luzon from and after the surrender of the city of Manila, the rest of the island being in the occupation of the Filipino troops and held by them both by force of arms, and under the authority of the *de facto* civil government established by Aguinaldo, as above stated, when William McKinley, as commander-in-chief of the army of the United States, on the 21st day of December, 1898, issued his military orders to General Otis, directing him to extend the military government previously maintained by him in the city, harbor and bay of Manila, not only over the whole island of Luzon, but over the entire group of Philippine Islands. By that order the Filipinos were told that the United States had succeeded to the sovereignty of Spain over them, and that they were to be brought under the beneficent rule of the United States; that those who submitted to this rule would receive the reward of its support and protection, and that those who did not submit to that rule would be "brought within it with firmness, if need be," meaning thereby the persuasion of gunpowder.

In vain did the Filipinos remonstrate and try to get access to General Otis for purposes of negotiation and conciliation. He assigned various reasons for not listening to them, among others that under instructions received by him from the President the only terms of peace he could entertain was that of their unconditional surrender.

Repeated attempts of this kind were made by them, always with the same result.

Aguinaldo had before then been recognized by Commodore Dewey and Generals Anderson and Merritt as an associate or ally in carrying on the war against Spain, and heartily welcomed by them in that relation, but when they had succeeded in defeating Spain and had no further need of Aguinaldo's assistance, he objected to President McKinley's

assuming to exercise the same sovereignty over him formerly wielded by Spain, and by so doing did not become a rebel against the authority of the United States.

VIII.

If President McKinley really desired to secure peace with Aguinaldo why did he refuse to adopt the usual and only practicable method of making peace after disputes have been submitted to the arbitrament of war?

He said substantially to Aguinaldo, You must submit yourself and your people to my authority and dictation, or take the consequences. These troops of mine are here to compel you to obey, and you cannot successfully resist them. The honor and defence of the American flag which I have set up in the island of Luzon requires this, and you must either surrender and submit or be killed.

There stood these armed men in battle array on both sides; on one side the trained soldiers of the United States placed there to enforce obedience to President McKinley's tyrannical order; and, on the other, the half-clad, raw and undisciplined troops of Aguinaldo with weapons furnished them by Commodore Dewey to throw off the yoke of their former master, Spain, determined to resist with their lives President McKinley's assertion of sovereignty over them by assignment from Spain.

The President and his supporters would have the people of this country believe that the Filipinos are now and for some months have been in rebellion against the authority or sovereignty of the United States, and that he as President might, lawfully and in his civil capacity, employ the American army in suppressing such rebellion.

If the rules of international law, as above quoted by us, are correct, it cannot be true that the Filipinos are now or ever have been in rebellion against the sovereignty of the United States, as is pretended and claimed by the Administration now in power. If not, then clearly the President has

no right whatever to sacrifice the lives of these poor people for refusing to submit to his dictation, and his responsibility for doing so seems to us to be a fearful one.

In a speech recently made to the people of Illinois by Attorney-General Griggs of the Cabinet, that gentleman said, —

“That to-day the United States of America possesses by solemn treaty the only lawful sovereignty over these (Philippine) Islands; . . . that in one of these islands one of these numerous tribes has raised an army of insurrection against the American flag, and has attempted . . . to drive the lawful authority of the United States from the island of Luzon.”

If that gentleman were to consult the dictionary he would find that rebels are defined as “those who oppose lawful authority by violence,” and that he should not call the Filipinos by that name unless he is prepared to show that they owe allegiance to the United States government.

IX.

We think the President seeks also to justify his course in using the American army to put down these Filipinos upon the plea that they brought on the conflict by making the first attack. In his speech at Pittsburg, Pa., he said: —

“The first blow was struck by the insurgents.”

In a speech made by him as late as Oct. 13th, at Fargo, N. D., he said: —

“We never dreamed that the little body of insurgents whom we had just emancipated from Spain . . . would turn upon the flag that had delivered them from Spain.

“Then it was that the insurgent leader made an attack upon our men and then our boys let loose.”

We cannot believe the President was correct in that statement except that part of it which shows that the insurgents had been previously emancipated and delivered from the power of Spain by the United States.

The truth of this matter, as understood by us, really is that on the night of Feb. 4th, 1899, a single Filipino, probably armed, but without hostile intent, was fired upon by an American sentry at his post and killed, and that thereupon the Filipino soldiers were so enraged that they at once made an attack upon the Americans, probably without any orders or authority from headquarters.

General Otis himself, referring to this incident, said : —

“It is not believed that the chief insurgent leaders wished to open hostilities at this time, as they were not completely prepared to assume the initiative.”

Strictly speaking, therefore, the first blood shed was that of a Filipino, recklessly fired upon and killed by the American sentry under the circumstances above stated.

X.

The President's claim of sovereignty over both the Philippine Islands and their inhabitants is now rested upon the treaty of peace and that alone.

By the third article of that treaty Spain cedes to the United States the archipelago known as the Philippine Islands, that is, she transfers to the United States her territorial sovereignty in those islands, whatever it then was.

The ninth article relates to “the civil rights and political status of the native inhabitants of those islands,” and by this article Spain undertakes to confer upon Congress the power of determining the future civil rights and political status of the Filipinos.

By the President's military order of Dec. 21, 1898, General Otis was directed to inform the inhabitants of the islands that the United States had succeeded to the sovereignty formerly exercised by Spain over them, and that this claim of sovereignty was to be enforced by the army of the United States placed there under the command of

General Otis, as military governor of all the Philippine Islands.

If this was not the initiation of a hostile movement against the inhabitants of Luzon then enrolled under the banner of Aguinaldo as the head of a *de facto* government there established by him, and the commander of a small army raised by him for its defence, what was it? These forces did not come into actual collision until the night of Feb. 4th, 1899, as hereinabove stated, and Aguinaldo on the next day sent an officer under a flag of truce to General Otis, stating that the fighting of the night before had not been authorized by him; that he wished that hostilities should be stopped, and proposing the establishment of a neutral zone between the two armies for that purpose.

The reply of General Otis was that the fighting once begun must go on.

Thus we see how slight a foundation the President has for the assertion that the Filipinos "*struck the first blow.*"

But the crowning offence of President McKinley in this matter is the use made by him of the treaty-making power as the means of acquiring from Spain dominion and control by the United States over the political condition of a remote people against their will, and by employing the army and navy to accomplish that end.

We suppose that the treaty-making power was conferred on the President by the Constitution in the interest of peace, and that it is a gross abuse and perversion of that power to employ or avail of it as an excuse for subjecting an unwilling people to the dominion of the United States, as is now being done by the President.

We think it sufficiently appears from the above that the United States has not acquired, from Spain or otherwise, any lawful authority over Aguinaldo and his followers, or any right to reduce them to subjection; and, therefore, that the war now being carried on against them in the island of Luzon is an offensive and not a defensive one, and is neither

justifiable nor excusable; that President McKinley is responsible for it and its deplorable consequences; that the honor of the flag, instead of requiring that it be further prosecuted, requires that it be stopped, in order that the free government established by our fathers for us may not be converted into one of military rule or despotism over others.

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